

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs to the Western Section on May 29, 2007

JAMES W. CLARK, JR.
v.
SOUTH CENTRAL CORRECTIONAL FACILITY, ET AL.

An Appeal from the Chancery Court for Davidson County
No. 05-968-III Ellen H. Lyle, Chancellor

No. M2006-00124-COA-R3-CV - Filed July 17, 2007

This appeal by a prisoner challenges the dismissal of a petition for writ of certiorari. The petitioner was incarcerated in a correctional facility located in Wayne County, Tennessee. After a prison disciplinary board found him guilty of engaging in an unauthorized transaction, the inmate filed a petition for common-law writ of certiorari in the Chancery Court for Davidson County, seeking judicial review of the disciplinary proceedings. The trial court dismissed the petition without prejudice for failure to comply with Tennessee Code Annotated § 41-21-805, which requires inmates who proceed *in forma pauperis* to provide the court with specific information about the inmate's prior lawsuits. The inmate now appeals. We affirm on different grounds,¹ finding that the inmate filed his petition in the wrong county and that the trial court therefore lacked jurisdiction to adjudicate this matter. The case is remanded for further proceedings as may be necessary.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed and Remanded.

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.
James W. Clark, Jr., appellant, *pro se*.

Robert E. Cooper, Jr, Attorney General and Reporter, Michael E. Moore, Solicitor General, and Kellena Baker, Assistant Attorney General, for appellees, Tennessee Department of Correction, George Little, and Carolyn L. Jordan.

¹This Court may affirm the judgment of a trial court on different grounds when the trial court reached the correct result. *Lewis v. Tennessee Dep't of Corr.*, No M2002-00608-COA-R3-CV, 2003 WL 21171495, at *1 n.1 (Tenn. Ct. App. May 20, 2003).

OPINION

Petitioner/Appellant James W. Clark, Jr., is an inmate in the custody of the Tennessee Department of Correction (“TDOC” or “Department”). At all times pertinent to this dispute, Clark was incarcerated at the South Central Correctional Facility (“SCCF”) in Wayne County, Tennessee, a privately-managed state prison. He is now incarcerated at the Northeast Correctional Complex in Mountain City, Tennessee.

On approximately January 18, 2005, the SCCF Library received a package containing a cassette recorder and tapes. The package included a note asking that the items be given to Clark.

On January 26, 2005, prison officials charged Clark with engaging in an unauthorized transaction.² In a later hearing before a disciplinary board, Clark conceded that he asked a friend to mail the package to the correctional facility. Apparently, Clark was involved in a medical malpractice lawsuit and intended to use the mailed items to depose a number of physicians. On February 2, 2005, the board found Clark guilty of the disciplinary offense and recommended a sentence of ten days in punitive segregation and a fine of \$4.00.³ Clark appealed the decision to the TDOC Commissioner, who affirmed the disciplinary board’s findings.

On April 14, 2005, Clark filed a pro se Petition for Writ of Certiorari in the Chancery Court for Davidson County, seeking judicial review of the disciplinary proceedings pursuant to section 27-8-101 of the Tennessee Code Annotated. Clark named as respondents the SCCF Disciplinary Board, SCCF Disciplinary Chairpersons, SCCF Warden Kevin Myers, TDOC Liaison Carolyn L. Jordan, TDOC Commissioner Howard Cook,⁴ and TDOC. Along with the petition, Clark filed a motion to proceed *in forma pauperis*, an affidavit of indigence, and a copy of his inmate trust account statement.

²TDOC administrative policies define “Unauthorized Financial Transactions/Obligations” as follows:

The selling, borrowing, or lending of goods (whether monies or property) or services between inmates or between inmates and free-world persons. The entering into any financial obligation between inmates or between inmates and free-world people without the consent of the warden.

TDOC Policy No. 502.05(VI)(A)(71).

³The South Central Correctional Facility is a privately-managed state prison. Private state prisons do not have authority to discipline state inmates. T.C.A. § 41-24-110(5). TDOC’s Uniform Disciplinary Procedures, therefore, “mandate appointment of a liaison between the TDOC and the private contractor.” *Mandela v. Campbell*, 978 S.W.2d 531, 532 (Tenn. 1998). The TDOC liaison must review, approve and, if necessary, modify the recommendations for punishment made by the disciplinary boards of private state prisons before actual punishment is imposed. *Id.* at 532-33.

⁴Former acting TDOC Commissioner Howard Cook was substituted as a respondent in his official capacity by current TDOC Commissioner, George Little.

Approximately five months later, on August 29, 2005, Clark filed a motion asking the trial court to direct the respondents to answer his petition. Instead of granting this motion, the trial court entered an order noting that Clark had failed to file summonses in duplicate to be served on the respondents and finding that the respondents were not required to answer his petition until the summonses were filed. The trial court also noted that, while Clark had established indigency, he failed to file the inmate affidavit required pursuant to Tennessee Code Annotated § 41-21-805. Section 41-21-805 requires an inmate who files a claim *in forma pauperis* to file an additional affidavit listing specific information about every lawsuit previously filed by the inmate, including whether the lawsuit was dismissed as frivolous or malicious. Clark was given until November 30, 2005 to cure these procedural deficiencies.

Subsequently, Clark filed the appropriate summonses as well as the additional affidavit. In the affidavit, Clark listed seven previously filed lawsuits, three of which had been dismissed.⁵ As to these latter three lawsuits, in response to the question of whether the lawsuits were dismissed as frivolous or malicious, Clark stated that he “Did Not Recall.”

After reviewing Clark’s affidavit on his previous lawsuits, the trial court issued a second order, stating:

This Court has considered whether the petitioner’s statement that he simply does not recall whether the lawsuits were dismissed as frivolous or malicious is deficient in complying with the statute. The Court has concluded that it is. In enacting Tennessee Code Annotated section 41-21-805 the legislature intended to make it more burdensome for inmates to file frivolous complaints, while not raising the barrier against valid claims to an unreasonable height. The statute requires that the inmate “shall” file a separate affidavit which states the final result of the action, including dismissal as frivolous or malicious. The burden is upon the inmate to provide this information. The respondents should not be required to expend time and money to defend if the inmate has not completed the initial paperwork to process a claim. Additionally, this Court has already given the inmate one opportunity and extension to provide the necessary information.

(citation omitted). Thus, the trial court dismissed Clark’s petition without prejudice on the grounds that he failed to comply with section 41-21-805 of the Tennessee Code Annotated. This order was entered on December 15, 2005.⁶ From this order, Clark now appeals.⁷

⁵According to the affidavit, two of the remaining four lawsuits were “settled out of court,” and the other two were “still in court” on appeal.

⁶After the trial court entered this order, the Department filed a motion to dismiss, citing additional procedural deficiencies. The Department asserted that Clark did not properly verify the petition, and it pointed out that the petition did not state that “it is the first application for the writ” in accordance with Tennessee Code Annotated § 27-8-106. The Department also argued that Davidson County was not the proper venue. Following the Department’s motion to dismiss, (continued...)

The issue presented to this Court is whether the trial court erred in dismissing Clark's petition for failure to comply with Tennessee Code Annotated § 41-21-805. We note that courts in this state have consistently held that an inmate's failure to comply with section 41-21-805 can be a sufficient ground for dismissing a petition filed *in forma pauperis*, see, e.g., **McGowan v. Gibson**, No. E2001-02455-COA-R3-CV, 2002 WL 554468 (Tenn. Ct. App. Apr. 15, 2007); **Adams v. Tennessee Dep't of Corr.**, No. M2005-00471-COA-R3-CV, 2007 WL 1574277 (Tenn. Ct. App. May 30, 2007); **Bradfield v. Dukes**, No. W2001-02067-COA-R3-CV, 2002 WL 1760237 (Tenn. Ct. App. Apr. 17, 2002). However, as a threshold issue, we must determine whether venue was proper for Clark's petition because, as explained below, this issue is jurisdictional.

As indicated above, Clark filed his petition for common-law writ of certiorari in the Chancery Court for Davidson County, challenging the decisions and proceedings of a prison disciplinary board. In seeking such a review, Clark was required to comply with both constitutional and statutory provisions applicable to the writ. **Johns v. Dalton**, No. M2005-01784-COA-R3-CV, 2007 WL 158159, at *2 (Tenn. Ct. App. May 31, 2007).

The venue provision governing a petition of this nature filed by a prisoner is found in section 41-21-803 of the Tennessee Code Annotated, which reads, "Except as otherwise provided by law, an action that accrued while the plaintiff inmate was housed in a facility operated by the Department shall be brought in the county in which the facility is located." T.C.A. § 41-21-803 (2003). This statute has been construed to localize claims filed by state inmates "against state entities, officials and employees, arising from the conditions or other incidents of incarceration" to the county in which the correctional facility is located. **Hawkins v. Tennessee Dep't of Corr.**, 127 S.W.3d 749, 765 (Tenn. Ct. App. 2002). As such, section 41-21-803 is jurisdictional, i.e., it not only dictates the proper locality of the action, but also governs whether the trial court has authority to adjudicate the matter. **Hawkins**, 127 S.W.3d at 753-54, 759, 763; *see also* **Thomas v. Mayfield**, No. M2000-02533-COA-R3-CV, 2004 WL 904080, at *2 (Tenn. Ct. App. Apr. 27, 2004) (noting that "where venue has been localized in a particular county, the courts of Tennessee have long held that venue and subject matter jurisdiction are synonymous").

In the case at bar, Clark filed his petition for writ of certiorari in Davidson County. However, section 41-21-803 required that the petition be filed in Wayne County, the county in which the correctional facility is located. *See, e.g., Jones v. Tennessee Dep't of Corr.*, No. M2004-01713-

⁶(...continued)

Mr. Clark filed a plethora of additional motions, including a motion to vacate the December 15, 2005 order and for transfer of the case to the proper court. The trial court denied all motions filed after its December 15, 2005 order on the grounds of mootness.

⁷On March 14, 2007, the SCCF respondents filed a motion to dismiss them from the appeal for lack of personal jurisdiction. They asserted that Clark failed to serve them with process as required by Rule 4 of the Tennessee Rules of Civil Procedure. Clark did not file an opposition to the motion and, on March 29, 2007, this Court entered an order dismissing the SCCF respondents from this appeal. Clark later filed a motion to reconsider the March 29, 2007 order. The motion was denied.

COA-R3-CV, 2007 WL 1241341 (Tenn. Ct. App. Apr. 27, 2007); *see also Hicks v. Campbell*, No. M2001-00280-COA-R3-CV, 2003 WL 22438441, at *1 n.3 (Tenn. Ct. App. Oct. 28, 2003); *Mandela v. Campbell*, No. M1998-00208-COA-R3-CV, 2003 WL 727320, at *1 n.5 (Tenn. Ct. App. Mar. 4, 2003); *Lewis v. Tennessee Dep't of Corr.*, No. M2002-00608-COA-R3-CV, 2003 WL 21171495, at *1 n.4 (Tenn. Ct. App. May 20, 2002).⁸

In some situations in which venue is found to be improper, this Court has vacated the trial court's judgment and remanded with instructions to transfer the case to the proper court in accordance with Tennessee Code Annotated § 16-1-116.⁹ *See, e.g., Hawkins*, 127 S.W.3d at 766-67. In this case, however, Clark's petition has several procedural defects in addition to those cited by the trial court—e.g., the petition was not properly sworn to, see T.C.A. §§ 27-8-104(a), 27-8-106, and it does not state that it is “the first application for the writ,” see T.C.A. § 27-8-106. While we are mindful that Clark is proceeding *pro se* in this matter, this fact does not excuse him “from complying with the same applicable substantive and procedural law that represented parties must comply with.” *Bowling v. Tennessee Bd. of Paroles*, No. M2001-00138-COA-R3-CV, 2002 WL 772695, at *3 n.6 (Tenn. Ct. App. Apr. 30, 2002) (citing *Hodges v. Tennessee Att'y Gen.*, 43 S.W.3d 918, 920 (Tenn.

⁸Like the instant petition, the cases cited above involved actions that accrued while the inmates were housed in privately-managed correctional facilities. In each case, the court relied on the construction of T.C.A. § 41-21-803 set forth in *Hawkins* for the proposition that a petition filed by a state inmate must be filed in the county in which the inmate's correctional facility is located. Although we agree with the holding in *Hawkins*, we note that the language of section 41-21-803 limits its application to actions that accrue while an inmate is housed in a facility “operated by the Department.” It has been noted that a prison operated by the Department is different from a prison operated by a private contractor in that a private prison does not have authority to punish prisoners for disciplinary infractions. T.C.A. § 41-24-110(5). The court in *Hawkins* noted in dictum that this difference had been deemed significant to the issue of venue and jurisdiction in the prior case of *Brown v. Majors*, No. W2001-00536-COA-R3-CV, 2001 WL 1683768, at *4 (Tenn. Ct. App. Dec. 19, 2001). *See Hawkins*, 127 S.W.3d at 758 n.8. In *Brown v. Majors*, we construed the general provision governing venue for petitions seeking review of decisions by boards and commissions, T.C.A. § 27-9-102, to require that a petition brought against the Department involving sanctions imposed by a private state prison be filed in Davidson County, where the Department has its principal office. However, in *Brown*, this was done without consideration of section 41-21-803. *Brown*, 2001 WL 1683768, at *5. Since *Hawkins* was issued in 2002, this Court has applied section 41-21-803 to all cases involving a petition for review of disciplinary board proceedings, regardless of whether the prison was operated by private contractors or state run. Thus, we apply *Hawkins* in this case but note that in light of *Brown v. Majors*, it is arguable that section 41-21-803 would not apply to a privately-managed correctional facility.

⁹This section provides that:

Notwithstanding any other provision of law or rule of court to the contrary, when an original civil action, an appeal from the judgment of a court of general sessions, or a petition for review of a final decision in a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, is filed in a state or county court of record or a general sessions court and such court determines that it lacks jurisdiction, the court shall, *if it is in the interest of justice*, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was originally filed. Upon such a transfer, the action or appeal shall proceed as if it had been originally filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it was transferred.

T.C.A. § 16-1-116 (Supp. 2005) (emphasis added).

Ct. App. 2000); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995)). Therefore, because Clark's petition does not comply with several procedural requirements for filing such a petition, we must conclude that neither the interests of justice nor the principles of judicial economy will be served by transferring this case to Wayne County. *Cf. Jones v. Tennessee Dep't of Corr.*, No. M2004-01713-COA-R3-CV, 2007 WL 1241341, at *2-3 (Tenn. Ct. App. Apr. 27, 2007). Accordingly, we affirm the trial court's decision to dismiss this case without prejudice on the grounds of improper venue.

The decision of the trial court is affirmed for the reasons stated herein, and the case is remanded for further proceedings as may be necessary. Costs of this appeal are to be taxed to Petitioner/Appellant James W. Clark, Jr., for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE